been revised a number of times, the last being April 4, 1973, over a year before the said Agreement was executed. It is clear in this case that there had been a misdescription of the premises. On the evidence I find that the misdescription was not wilful or designed but due to carelessness on the part of the defendants. The question was whether the misdescription was such as to entitle the plaintiffs to rescind the contract altogether.

In *Flight* v. *Booth,*[1] Tindal C.J. said (at p. 1162): —

"It is extremely difficult to lay down, from the decided cases, any certain definite rule which shall determine what misstatement or misdescription in the particulars shall justify a rescinding of the contract, and what shall be the ground of compensation only. All the cases concur in this, that where the misstatement is wilful or designed, it amounts to fraud; and such fraud, upon general principles of law, avoids the contract altogether. But with respect to misstatements which stand clear of fraud, it is impossible to reconcile all the cases; some of them laying it down that no misstatements which originate in carelessness, however gross, shall avoid the contract, but shall form the subject of compensation only; *Duke of Norfolk* v. *Worthy* (1 Campb. 340), *Wright* v. *Wilson* (1 Mood. & Rob. 207); whilst other cases lay down the rule, that a misdescription in a material point, although occasioned by negligence only, not by fraud, will vitiate the contract of sale; *Jones* v. *Edney* (3 Campb. 284), *Waring* v. *Hoggart* (1 Ry. & Mood. 39), and *Stewart* v. *Alliston* (1 Mer. 26). In this state of discrepancy between the decided cases, we think it is, at all events, a safe rule to adopt, that where the misdescription, although not proceeding from fraud, is in a material and substantial point, so far affecting the subject-matter of the contract that it may reasonably be supposed, that, but for such misdescription, the purchaser might never have entered into the contract at all, in such case the contract is avoided altogether, and the purchaser is not bound to resort to the clause of compensation. Under such a state of facts, the purchaser may be considered as not having purchased the thing which was really the subject of the sale; as in *Jones* v. *Edney*, where the subject-matter of the sale was described to be 'a free public house,' while the lease contained a proviso, that the lessee and his assigns should take all their beer from a particular brewery; in which case the misdescription was held to be fatal."

The plaintiffs' evidence was that they wanted to purchase an office to the amount of $320,000 to $350,000 and that in 1974 they had liquid cash to purchase up to $350,000 and that was the limit they were prepared to spend. The plaintiffs said that if at the time when discussion took place to purchase the property they were told that the price would be $415,000 they would not have entered into the said Agreement and that they were not prepared to raise the extra $65,000 by mortgage. They said that the extra sum they were asked to pay considerably affects the value of the property and they were shocked when they received the letter of November 11, 1976. I came to the conclusion that the plaintiffs had been greatly prejudiced by the misdescription of the premises.

I came to the view that the plaintiffs had every right to rescission and I therefore gave judgment for the plaintiffs for rescission and the return of the $315,018, together with interest at the rate of 8 percent from January 7, 1977, to date of judgment, and costs.

Application allowed.

Solicitors: *Murphy & Dunbar; Tang & Tan.*

MALAYSIAN REPORTS

DAIMAN DEVELOPMENT SDN. BHD. v. MATHEW LUI CHIN TECK AND ANOTHER APPEAL

[F.C. (Suffian L.P., Gill C.J. (Malaya) and Ibrahim J.) July 16 and 31, 1978]

[Johore Bahru — Federal Court Civil Appeal Nos. 169 and 170 of 1977]

Contract — Sale of land and house — Booking pro forma — Developers subsequently sought to increase price — Whether there was contract of sale — Housing Developers (Control and Licensing) Rules, 1970.

Land Law — Sale of land and house by developers — Booking pro forma — Whether formal contract — Whether developers could subsequently increase price — Housing Developers (Control and Licensing) Rules, 1970.

Housing Developers — Booking pro forma — Whether developers could subsequently increase price.

In this case the respondent was desirous of buying a house. He went to see the developers (the appellants), chose a house, paid a booking fee of $700 and signed a booking *pro forma*. According to the booking *pro forma* the parties agreed the purchase price of the house at $26,000. The respondent also agreed that on receiving notice by the respondents he would sign the agreement for sale. Subsequently the appellants informed the respondent that the price of the house was increased to $35,100 because of "amendments to the building plans and increase of material and construction costs." The respondent did not agree to the increased price. The appellants informed the respondent that unless he agreed to pay the deposit based on the increased price, they would cancel the booking and refund the booking fee. The respondent thereupon applied to the court and the High Court gave judgment in his favour and ordered the developers on payment of the balance of the purchase price to transfer the property to the respondent. The appellants appealed.

Held, dismissing the appeal: (1) the booking *pro forma* was a firm contract. It identified the parties and it specified the property to be bought and its price;

(2) the appellants as developers were bound by the Housing Developers (Control and Licensing) Rules 1970 and only details could be inserted into the further agreement. In this case the details were never put to the respondent and he never had an opportunity to consider them;

(3) in the circumstances the appellants had no right to change the price stated in the booking *pro forma.*

Case referred to:-

(1) *Yeo Long Seng* v. *Lucky Park (Pte) Ltd.* [1971] 1 M.L.J. 20.

The following cases were also cited in the argument: *Yap Eng Thong & Anor.* v. *Faber Union Ltd.* [1973] 1 M.L.J. 191; *Skyline Trading Co.* v. *Tiow Yoke Lan* [1969] 2 M.L.J. 212; *Low Kar Yit & Ors.* v. *Mohammed Isa & Ors.* [1963] M.L.J. 165.

The following judgment of the court below (J.B. Civil Suit No. 416 of 1975, *Arthur Lee* for the plaintiff and *S. Patmanathan* for the defendants) was delivered on August 15, 1977:

Syed Othman J.: The plaintiff seeks specific performance by the defendants of an agreement between them for the sale by the defendants of a piece of a property i.e. land together with a single storey semi-detached house to be erected thereon at Taman Sri Tebrau, Johore Bahru, for $26,000; alternatively damages for breach of contract.

Both parties are agreed that the whole case depends on the construction of certain provisions in the

Housing Developers (Control & Licensing) Rules 1970 (P.U. (A) 208/70) and of a booking *pro forma* signed by the plaintiff at the instance of the defendants, when he agreed to purchase the property on paying a booking fee of $700. The *pro forma* reads:

"DIAMAN DEVELOPMENT SDN. BERHAD

Booking Pro forma

Name of intending purchaser Mr. Mathew Lui Chin Teck (NRIC 0690161).

Address Post Office, Kota Tinggi, Johor.

Lot No. Booked (as per company's layout) 949.

Approximate Basic Area 2,800 sq. ft. Type of house single storey semi-detached.

Purchase price Dollars Twenty Six thousand only ($26,000).

I, the abovenamed Mathew Lui Chin Teck, hereby agree to purchase the above Lot together with the house as specified at the above stated price for which a Booking Fee of $700 is now paid to the Company subject to the following terms and conditions:—

1. That within (2) weeks from the date of receipt of a notice by the Company, sent to the above address, I shall pay to the Company or its solicitors, M/S A.L. Looi of Rooms 401 & 402, 4th Floor, O.C.B.C. Building, Johore Bahru, Johore the sum of $2,600 and sign the agreement for Sale with the Company which shall be prepared by the Solicitors and subject to the terms and conditions therein.

2. That I have inspected the Company's layout and building plans and specifications and agree to accept whatever alterations and amendments as may be required by the Authorities. In the event of major alterations and amendments to the layout plan I reserve the right to cancel my booking and the booking fee hereby paid shall be refunded to me by the Company free of interest.

3. That in the event of failure on my part to comply with Clause 1 above after due notice has been given by the Company or its Solicitors, the Booking will be treated as cancelled and the Booking fee of $700 shall be forfeited to the company and I shall have no further claims against the Company.

4. That the area of the Lot above stated is only approximate and in the event that the area thereof differs upon the issue of the Qualified Title in respect of the said Lot, I shall abide to the same and agree to pay $2 per sq. ft. for any excess above the basic area and in the event of shortage in the basic area above stated the Company shall refund to me the difference calculated at the rate of $2 per sq. ft.

Dated this 1st day of October, 1972.

Sgd.
Witness

Sgd.
Signature of intending purchaser"

The dispute arose when on May 30, 1975 the defendants wrote a letter to the plaintiff informing him that the price of the property was being increased to $35,100 and if the price was not acceptable the booking might be cancelled and the property sold to another person.

The plaintiff did not agree to this and wrote on June 4, 1975 (AB6) to the defendants insisting that the old price as agreed upon could not be altered. Then on June 10, 1975 (AB7) he sent a cheque for $1,900, which, with the booking fee of $700 totals $2,600 being 10% deposit of the agreed price. The defendants by AB8 replied on June 13, 1975 stating:—

"We do not agree to your contentions therein and as you do not agree to the adjustment in our price, we regret we cannot accept your payment."

The cheque was returned. There was subsequent correspondence, but it did not change matters. The plaintiff insisted that the price of the property should remain as in the *pro forma*, while the defendants maintained that the increase was "very *reasonable compared to the current prices* of houses in Johore Bahru" and suggested that the plaintiff should either withdraw the booking or transfer it to someone else (See AB10).

The defendants' evidence as given by the manager may be summarised as follows. The defendants decided to develop the land it had purchased by building 1720 units of houses and shop-houses and by reserving some areas for market, school, health centre, post office and community centre. The layout plan was put up in the office. When the plaintiff came to the office he informed the plaintiff that it would take one or two years before construction would start, as the defendants had to obtain approval for the sub-division and construction, and the agreement would be signed when construction was about to start. The defendants applied for sub-division early in 1973 and had to comply with many requirements by the authorities i.e. amendments to the building plans, 30% of the buildings to be sold to bumiputras at 15% discount, surrender of land about 11.5 acres for school, post office, health centre, a community centre and market; the 18 feet road to be widened to 20 feet; granite for road depth to be increased by 2 inches; back lanes to be widened; Sg. Sengkuang running along the developed area to be deepened and to contribute to the cost of lining the river with concrete; and provisions for overhead wires for N.E.B. installations and other minor works. The conditions were complied with and the sub-division of the land was approved in October, 1974. By this time, according to the witness, the building materials had gone up, and the defendants had to increase the price of the house from $26,000 to $35,100.

In answer to questions by the court the manager says that the additional cost to the company was $7 million, the estimated costs was $2 million.

In argument, the defence contends that the booking *pro forma* was in effect an agreement which was subject to contract and cannot be treated as a complete agreement, as paragraph 1 of the *pro forma* mentions that there is an agreement of sale to be signed.

For the plaintiff, it is argued that the statement of defence is not supported by evidence as adduced by the defence; it may be that development cost might have increased by $2 million, but if it was intended that the purchaser was to bear this cost, then there should have been some provisions in the *pro forma* to show this, and the *pro forma*, as it stands, gives the plaintiff an irrevocable option to purchase the property at the price stated.

In dealing with the case here, I do not propose to discuss the many authorities concerning "subject to contract" which have been referred to by both sides. As I have stated earlier, the case revolves, as agreed, on the construction of the *pro forma* and on the effect of the rules 10 and 12 of the Housing Developers (Control and Licensing) Rules, 1970. Rule 10 reads:—

"10. (1) A purchaser of housing accommodation including the land shall not be required to pay a booking fee of a sum exceeding 2.5 per centum of the purchase price of such housing accommodation including the land.

(2) Notwithstanding paragraph (1) of this Rule, no purchaser of a housing accommodation including the land shall be required to pay a booking fee of a sum exceeding one thousand dollars.

(3) For the purposes of this Rule the term 'booking fee' shall include any payment by whatever name called which payment gives the purchaser an option or right to purchase the housing accommodation including the land."

The provisions of rule 10 are quite *clear*. The intention of subrule (1) is that the purchase price must be stated at the time of the booking. By subrule (3) the booking fee is to be treated as an option or right to purchase the property at, in my view, the purchase price stated.

Rule 12 lays down that the contract of sale shall be in writing and prescribes the terms and conditions to be contained in the contract of sale. They are rather comprehensive. For the purpose of the present case, I need refer only to subrule (1) paragraphs (g) and (i). The substantive part of paragraph (g) reads:—

"... The price of such land for purpose of adjustment shall be calculated as the same price per square foot as was used to calculate the purchase price stated in the contract of sale and any payment resulting from the adjustment and requiring to be paid by the party concerned shall be so paid within seven days of the issue of the new document of title."

In the *pro forma* the approximate area of the land allotted for the house to be built is stated to be 2,800 square feet and in paragraph 4 of the *pro forma* the purchase price is fixed at $2 per square foot. According to rule 12(1)(g), the defendants may adjust the price of the land depending on the actual measurements shown in the document of title. There is no evidence to show that adjustments were required for this purpose, and I can see no provision whereby the developer can make other adjustments.

Paragraph (i) of rule 12(1) speaks for itself. It reads:—

"(i) provision binding on the licensed housing developer that the housing accommodation to be erected for the purchaser shall be constructed in good and workmanlike manner in accordance with the specifications and plans described in the contract of sale which specifications and plans have been approved by the appropriate Authority, and agreed to by and between the purchaser and the licensed housing developer. No changes thereto or deviation therefrom shall be made without the consent of the purchaser except such as may be required by the Appropriate Authority or certified by the architect of the licensed housing developer to be expedient or necessary. The cost of such changes or deviations shall be borne by the licensed housing developer and no claim whatsoever may be made against the purchaser."

I now come to the statement of defence. The defence contends that if the building materials rise in price beyond the expectation of the intended purchasers they are entitled to refuse to purchase any property and hence withdraw their money paid in. I can see nothing in the *pro forma* which gives the defendants this right. In any case, no evidence is adduced showing the extent of the rise in the price of the materials which were beyond the expectation of the purchasers.

The statement of defence then alleges "the plaintiff permitted the defendants to make the necessary alterations which may be required from time to time and agreed to pay for the same. However, if there were to be major alterations then the plaintiff expressly stated he would consider and settle the same or alternatively have the right to cancel the said booking and demand refund of $700 paid in". No evidence is adduced that the plaintiff gave permission as pleaded. In fact the plaintiff complained in his letter (AB11) dated August 20, 1975 that the alterations to the house plan were inferior to the original, and pointed out the *pro forma* refers to alterations by the authorities and not by the defendants. The defendants in reply merely said that they could not accept the contentions.

Looking at the *pro forma*, I cannot see any single phrase which gives the defendants the right to alter the price of the property in the event of any change in the house plan. Clause 2 of the *pro forma* gives the right to the plaintiff to cancel the booking in the event of major alterations and amendments to the layout plan. It does not give the defendants such right. As far as I can see most of the requirements of the authorities were in fact in the proposed layout plan. The defence witness himself says in evidence that the layout plan provided reserves for post office, school, market and other amenities as required by the authorities. Considering the clause, even if there were such major alterations and amendments, it would be a matter, not for the defendants, but for the plaintiff whether or not to cancel his booking. Further, I can find no evidence that there was in fact any major alteration to the layout plan.

Apart from all what I have said, the very fact that the defendants suggested in AB10 that the plaintiff should either withdraw the booking or transfer it to someone else shows that the defendants themselves knew that they had no right to withdraw from the contract.

The defence evidence on increase in costs generally, I would regard as somewhat bland and not at all convincing. I doubt very much if there was any substantial increase in cost as stated by the defence witness. Letter AB10 dated June 24, 1975 makes no mention of increase in costs. Its paragraph 2 reads:—

"The increase in the price has to be made in view of the amendments to the building plans and to the over-all development of our housing scheme. We contend that the increase is very reasonable compared to the current price of houses in Johore Bahru."

No evidence is adduced that the amendments required by the Authorities were such that they entailed cutting down the units of houses to be built and surrender of more land than proposed in the original layout plan. It may be that the changes for the inferior as contended by the plaintiff were made to make up for other costs, bearing in mind that sale to bumiputras was required to be at 15% discount.

I am of the view that under paragraph 1 of the *pro forma*, whatever agreement of sale was to be signed, payment by the plaintiff at that stage of signing the agreement of sale was fixed at $2,600, i.e. 10% of the purchase price. This by itself clearly fixes the purchase price of the property. I find that the *pro forma* in the present case has about the same effect as the one appearing in *Yeo Long Seng* v. *Lucky Park (Pte) Ltd.*,[1] referred to by Encik Arthur Lee, for the plaintiff. With respect I agree with the remarks by Winslow J. at page 23: —

"It may well be said that conveyancing practice recognises a formal contract of sale concluded in the usual form and in accordance with the usual conditions of sale as being part of the normal machinery or procedure preceding a conveyance

of land. The agreement in the schedule now takes the place of the formal contract required in the case of sales by developers. This however is far from saying that there can never be any contract at common law if all the agreed terms between the parties are incorporated in correspondence or in some other way sufficient to constitute a sufficient note or memorandum evidencing agreement leaving no other term to be yet agreed."

Even without considering the rules that have been prescribed, I am inclined to think that the terms and conditions of the sale agreement mentioned in paragraph 1 of the *pro forma* would only relate to consequential matters affecting the sale, but not the purchase price.

Considering the case as a whole, my strong feelings are that the defendants have increased the price of the property to be sold for no other reason but that there was a general increase in the price of property in Johore Bahru.

The property is under caveat and has not been transferred to anyone. The plaintiff's application for specific performance is hereby granted. The property is hereby ordered to be transferred to the plaintiff within 3 months, subject to payment by the plaintiff of the whole of the purchase price as agreed upon. Costs to the plaintiff.

The defendants appealed to the Federal Court.

FEDERAL COURT.

C. Abraham (*S. Patmanathan* with him) for the appellants.

Arthur Lee for the respondent.

Suffian L.P. (delivering the judgment of the Court): We dismissed these two appeals and now give our reasons.

The learned trial judge has written a comprehensive judgment, and we need only be brief.

The defendants (appellants before us) are housing developers in Johore Bahru, where they planned to build on a big tract of land 1,720 units of houses for sale to the public. (For brevity we shall refer to them as the developers.)

The facts in the two cases from which these appeals arise are the same, and it was agreed that the result in one case would determine the result in the other.

It is enough if we refer only to the facts in appeal 169 which are as follows.

The plaintiff went to the developers' office wanting to buy a house. He chose a single-storey semi-detached house to be built on a specified lot, Lot No. 949, paid a booking fee of $700, was given a receipt by the developers, at page 56 of the appeal record (AR56) and signed a booking *pro forma* AR55. (This was on October 1, 1972, and that was the date borne on the receipt and *pro forma*). The *pro forma* reads as follows:—

"DAIMAN DEVELOPMENT SDN. BERHAD

Booking Pro forma

Name of intending purchaser Mr. Mathew Lui Chin Teck (NRIC 0690161).

Address Post Office, Kota Tinggi, Johore.

Lot No. Booked (as per Company's layout) 949.

Approximate Basic Area 2,800 sq. ft.

Type of house single-storey Semi-detached.

Purchase price Dollars Twenty Six Thousand only ($26,000).

I, the abovenamed Mathew Lui Chin Teck, hereby agree to purchase the above Lot together with the house as specified at the above stated price for which a Booking Fee of $700 is now paid to the Company *subject to the following terms and conditions*:—

1. That within two (2) weeks from the date of receipt of a notice by the Company, sent to my above address, I shall pay to the Company or its Solicitors, M/s A.L. Looi of Rooms 401 & 402, 4th Floor, O.C.B.C. Building, Johore Bahru, Johore, the sum of $2,600 and sign the Agreement For Sale with the Company which shall be prepared by the Solicitors and subject to the terms and conditions therein.

2. That I have inspected the Company's layout and building plans and specifications and agree to accept whatever alterations and amendments as may be required by the Authorities. *In the event of major alterations and amendments to the layout plan I reserve the right to* cancel my booking and the booking fee hereby paid shall be refunded to me by the Company free of interest.

3. That in the event of failure on my part to comply with Clause 1 above after due notice has been given by the Company or its Solicitors, the Booking will be treated as cancelled and the Booking Fee of $700 shall be forfeited to the Company and I shall have no further claims against the Company.

4. That the area of the Lot above stated is only approximate and in the event that the area thereof differs upon the issue of the Qualified Title in respect of the said Lot, I shall abide to the same and agree to pay $2. per sq. ft. for any excess above the basic and in the event of shortage in the basic area above stated the Company shall refund to me the difference calculated at the rate of $2 per sq. ft.

Dated this 1st day of October, 1972.

Sd. (Illegible) Witness

Sd. (Illegible) Signature of intending purchaser"

It will be noticed from the booking *pro forma* that the parties agreed the purchase price of the house at $26,000 and that the plaintiff agreed to buy the property subject to the four conditions set out in it.

It seems that there was much delay in completion of the project and nearly three years later, on May 30, 1975, the developers sent a letter AR57 to the plaintiff —

(a) unilaterally increasing the price by $9,100 to $35,100, because, it was said, of "amendments and additions to the building plans and the increase of material and construction costs";

(b) asking the plaintiff to pay a further deposit of $2,810, so that the total deposit to be paid by him would have come to $3,510, i.e., 10% of the new purchase price, and to sign the Agreement of Sale (as required by Condition 1 of the booking *pro forma*); and

(c) saying that if the plaintiff failed to pay and sign the Agreement within 14 days the developers would treat the booking as cancelled, whereupon the developers would be free to sell the property to another without being liable to the plaintiff or alternatively the developers would refund the booking fee back to the plaintiff under Condition 2 of the booking *pro forma*.

On June 4, 1975, the plaintiff wrote the letter AR58 insisting that the developers could not increase the price at all. He contended that the booking *pro forma* was binding on both parties, that it did not give the developers a right to increase the price nor

forfeit nor refund the deposit if the plaintiff insisted on having the house, which the plaintiff did. On June 11 he posted to the developers the letter AR59 enclosing a cheque for $1,900 — which added to the $700 already paid would have come to $2,600, being 10% of the $26,000, the original price. Finally the plaintiff asked the developers when he might call at their office to sign the agreement. By letter dated June 13, AR60, the developers returned the cheque, saying that they did not agree with the plaintiff's contention. By letter dated June 21, AR61, the plaintiff insisted that the developers were in breach of their agreement. By letter of June 24, AR62, to the plaintiff, the developers contended that what had been signed was only a booking *pro forma*, not an agreement, and further explained the increase in price as follows:

"The increase in the price has to be made in view of the *amendments to the building plans* and to the over-all development of our housing scheme. We contend that the increase is very reasonable *compared to the current prices* of houses in Johore Bahru."

By letter of August 20, AR63, the plaintiff stuck to his gun. He contended that under the booking *pro forma* the amendments to the plan of the house were for the worse, not better, and that the intending purchaser only agreed to amendments required "by the Authorities", not otherwise.

By letter of August 23, AR64, the developers gave formal notice that unless the further sum of $2,810 was paid they would cancel the booking and refund the booking fee.

On September 2 the plaintiff — this time through solicitors — wrote, insisting that the developers honour their bargain, and asking them to send the agreement stating therein the agreed price, for signature by the plaintiff. The developers did not send the agreement: by letter of September 6 they said that they were "not being unreasonable as you will note the wide difference in our price compared with the current prices of other houses now being sold by other developers in Johore Bahru."

On October 16, 1975, the plaintiff filed suit.

The learned judge gave judgment for the plaintiff and ordered the developers on payment of the balance of the purchase price to transfer the property to the plaintiff.

In our respectful view the learned judge was quite right.

The issue was whether the booking *pro forma* was a mere agreement to agree, as the defendants contended, or a firm contract of sale of the property, as the plaintiff contended. In our judgment, the *pro forma* was a firm contract. It identified the parties, it specified the property to be bought and its price. True, the plaintiff was required to sign an agreement of sale to be prepared by the developers' solicitors and subject to the terms and conditions therein; but in fact the developers never showed the plaintiff the draft of any agreement. All the developers did was to announce unilaterally an increase in price for reasons which could not, in our view, affect the price to be paid by the plaintiff. The developers are bound by the Housing Developers (Control and Licensing) Rules, 1970, published as P.U.(A) 268 of 1970, and only details may be inserted into the further agreement. These details were never put to the plaintiff and he never had an opportunity to consider them; it was only after the plaintiff had rejected the draft of the further agreement that the developers might — we say might deliberately — call off the sale.

The *pro forma* allowed that price to be varied only in two ways: first, under Condition 2, if the price was changed because of alterations and amendments to the developers' layout and building plans and specifications required "by the Authorities". In the event of major alterations and amendments being made to the layout plan — which had the effect of increasing the price of the house — the plaintiff would have the right to cancel his booking and recover his deposit. It is to be noted that this condition gave the developers the right to effect alterations and amendments required by the authorities, irrespective of whether the plaintiff agreed or not, and gave the plaintiff the right to withdraw and recover his deposit in the event of major alterations and amendments to the layout plan; but it did *not* give the developers the right to increase unilaterally the price of the house as a result of these alterations and amendments.

Secondly, under Condition 4, the developers had the right to increase the price should the land turn out to be bigger than originally thought.

Apart from the above, we do not think that the developers could in any way change the price stated in the *pro forma*.

For the above reasons we dismissed these appeals.

We considered the application of the developers for a stay of execution pending further appeal and the objections on behalf of the plaintiff and decided that in the circumstances no further stay should be granted.

Appeals dismissed.

Solicitors: *A.L. Looi & Co.; Nik Hussain, Ibrahim & Abdullah.*

KULASINGAM v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Gill C.J. (Malaya), Lee Hun Hoe C.J. (Borneo), Raja Azlan Shah and Wan Suleiman F.JJ.) May 15 and August 3, 1978]

[Kuala Lumpur — Federal Court Criminal Application No. 1 of 1978]

Criminal Law and Procedure — Reservation of question of law for decision of Federal Court — Application refused in the High Court — Whether appeal lies to Federal Court — Federal Constitution, arts. 125A, 128 & 130 — Courts of Judicature Act, 1964, ss. 50, 66 & 74.

Constitutional Law — Jurisdiction of Federal Court — Whether appeal lies to Federal Court from refusal of High Court to reserve question of law for decision of Federal Court — Courts of Judicature Act, 1964, ss. 50, 66 & 74 — Federal Constitution, arts. 125A, 128 & 130.

In this case the accused had been convicted on appeal in the High Court on a charge of criminal breach of trust contrary to section 409 of the Penal Code. An application was made to the learned judge of the High Court for certain questions of law of public interest to be referred to the Federal